

105 FERC ¶ 61,124  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Pat Wood, III, Chairman;  
William L. Massey, and Nora Mead Brownell.

Colorado Interstate Gas Company

Docket No. RP03-617-000

ORDER ACCEPTING SERVICE AGREEMENTS SUBJECT TO CONDITIONS

(Issued October 24, 2003)

1. On September 26, 2003, Colorado Interstate Gas Company (CIG) filed three firm transportation service agreements (FTSAs) as non-conforming.<sup>1</sup> CIG states that it is submitting these three FTSA's for review under the Commission's material deviation policy, even though the FTSA's were entered into before the Commission clarified its policies on non-conforming service agreements. CIG requests that the Commission accept the three FTSA's as "grandfathered," permissible non-conforming agreements because they were unique to the shipper's individual circumstances at the time and entered into prior to formulation of the Commission's material deviation policy. As discussed below, the Commission will accept all three FTSA's subject to conditions.

2. This order is in the public interest since it approves provisions in FTSA's that provide for flexibility to meet the needs of certain shippers and the pipeline, while preventing undue discrimination amongst CIG's system-wide shippers.

**Instant Filing**

3. The non-conforming agreements for which CIG seeks Commission approval contain the following flexible right provisions: (1) adjustments to contract quantity (MDQ); (2) revised surcharges; (3) revised receipt and delivery point rights; (4) flexible

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<sup>1</sup> The three FTSA's (i.e., one with High Plains Gathering System LLC, one with Petroglyph Energy, Inc., and one with Helmerich & Payne Energy Services, Inc.) were filed in light of various Commission orders issued in 2001 explaining the Commission's material deviation policy. These three FTSA's have been in place from as far back as 1994 and are not due to terminate until 2005, at the earliest.

production-related provisions; (5) FTSA precedent agreement; and (6) negotiated rate provisions.

### **Interventions and Protest**

4. Notice of CIG's filing was noticed on October 2, 2003, with interventions and protests due on or before October 8, 2003. Notices of intervention and unopposed timely filed motions to intervene are granted pursuant to the operation of Rule 214 of the Commission's Rules of Practice and Procedure (18 C.F.R. § 385.214 (2003)). Any opposed or untimely filed motion to intervene is governed by the provisions of Rule 214. No protests or adverse comments were filed.

### **Discussion**

5. CIG requests that the Commission accept all three FSAs, including the amended precedent agreement, as grandfathered permissible non-conforming agreements because they are unique to the shipper's individual circumstances at the time and were entered into prior to the formulation of the Commission's material deviation policy.<sup>2</sup>

6. The Commission will accept all three FSAs filed herein since they have been ongoing for some time and have been relied upon by the parties. Further, no party has requested that the Commission modify or cancel these FSAs. However, CIG is put on notice that before new FSAs with such material deviations can be placed into effect in the future, they must be filed and approved by the Commission. In addition, CIG is directed to revise its tariff and form of service agreement consistent with the discussion below so that various provisions do not constitute material deviations or negotiated terms and conditions of service. Finally, CIG is directed to file revised tariff sheets pursuant to its negotiated rate authority as discussed below.

#### **I. Allowable Adjustments to Contract Quantity**

7. All three FSAs contain a provision that permits the shipper to adjust its MDQ during the term of the agreement under specific circumstances. CIG states that these contracts were entered into with producers for a long duration. Producers were concerned about fixed MDQ amounts due to the uncertain nature of the exploration and production process. Producers argued they were unable to reliably predict their production levels ten years or more into the future and accordingly required MDQ flexibility in their long-term contracts. When subsequently asked to renegotiate these MDQ adjustment provisions, the shippers all maintained that these provisions were

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<sup>2</sup> See Columbia Gulf Transmission Co., 101 FERC ¶ 61,039 (2002).

critical to their business, given the uncertain nature of their respective businesses over the long term.

8. CIG's contract with High Plains Gathering System, LLC (High Plains) was entered into on January 1, 2000 and has a termination date of December 31, 2005. It provides High Plains' initial MDQ of 3800 Dth per Day for the first three years and three months of the contract. The MDQ was set at 3610 for the next nine months. During the last two years of the contract, the MDQ is to be reduced to match total production available from the leases owned or controlled by shipper.

9. CIG entered into an agreement with Helmerich & Payne Energy Services, Inc. (Helmerich and Payne) on October 1, 2001 for the period through September 30, 2009 with a MDQ of 17,500 but with Helmerich and Payne having the right to increase MDQ to 35,000 during specified periods, based on available capacity.

10. CIG's contract with Petroglyph Energy Inc. (Petroglyph) was entered into on July 1, 1998. It provides that the MDQ begins in the first year at 2,000 Dth per day, increases to a maximum of 14,000 Dth per Day in the 10<sup>th</sup> year, and declines to 6,000 Dth per Day at the end of the 12<sup>th</sup> year. If Petroglyph's actual production does not meet these estimates used to set the MDQ, Petroglyph has the one-time option to buy down the MDQ pursuant to a formula in the FTSA.

### **Commission's Determination**

11. The Commission finds that each of MDQ adjustment provisions contained in the three FTSA's constitute a material deviation that presents the potential for undue discrimination, unless offered in the general terms and conditions of CIG's tariff.<sup>3</sup> The MDQ adjustment provisions permit the shipper to either increase or decrease its MDQ during the term of the agreement. A unique provision in a shipper's contract allowing it to increase MDQ without following the regular procedures set forth in the pipeline's tariff for purchasing capacity could adversely affect others seeking capacity from the pipeline, since the shipper with the unique provision would have a priority for obtaining the capacity. This unique right to increase contract demand is contrary to Commission policy.<sup>4</sup> In addition, a shipper's right to reduce its contract demand before the expiration of its agreement is a valuable right since it can enable the shipper to avoid significant liability for future reservation charges. Such a right must be granted in a not unduly discriminatory manner. Therefore, the Commission directs CIG to place a clause permitting MDQ adjustment provisions in its generally applicable tariff and reflect such a

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<sup>3</sup> See CenterPoint Energy Gas Transmission Company, 104 FERC ¶ 61,281 (2003).

<sup>4</sup> See ANR Pipeline Company, 97 FERC ¶ 61,224 (2001).

change in its pro forma service agreement. Alternatively, CIG may file to remove the MDQ adjustment provisions from all three FTSA.

## **II. Revised Surcharges**

12. Each FTSA filed herein references CIG's Hourly Flexibility Surcharge (HFS). However, CIG states that this surcharge is no longer applicable and has been removed from its tariff, and the shippers are no longer assessed this surcharge. The Gas Quality Control surcharge (GQC) is also referenced in each of the three FTSA with minor differences in the description of the surcharge. CIG points out that this reference merely reflects changes in the form of service agreement over time and does not provide the shippers under each FTSA with substantive rights.

### **Commission's Determination**

13. Since the HFS is no longer applicable, the Commission directs CIG to remove this provision from all three FTSA.

14. All three FTSA have been slightly modified to reflect a minor difference in the description of the GQC surcharge. The Commission finds this minor modification does not change the rate or the billing of the surcharge. As a result, this provision is not a material deviation that is unduly discriminatory in nature. Therefore, the Commission accepts this provision in all three FTSA.

## **III. Revised Receipt and Delivery Point Rights**

### **A. Fuel Provision**

15. High Plain's FTSA repeats the fuel provision contained in the form of service agreement with two additional sentences. The additional language provides that volumes measured at the primary receipt point will be increased by the amount of fuel used for compression upstream of the meter but downstream of the actual receipt point. CIG states that this provision is unique to the operational aspects of this FTSA and is necessary because the measurement station is located downstream of the physical receipt point and fuel is consumed prior to that point.

### **Commission's Determination**

16. The Commission finds that the clarification to the standard fuel provision is unique to the operational aspects of the High Plains' FTSA and is necessary because the measurement station is located downstream of the physical receipt point and fuel is consumed prior to that point. Therefore, the Commission accepts this material deviation

from the standard fuel provision since it is not unduly discriminatory to other shippers but is unique to the High Plains' agreement.

### **B. Receipt Point Change**

17. The High Plains' FTSA contains a provision providing that the primary receipt point will be changed to an upstream point if CIG purchases shipper's upstream facilities. CIG states that it has now acquired the High Plains' Niobrara compressor station and that this receipt point change provision is no longer applicable.

### **Commission's Determination**

18. The Commission finds that Exhibit A of the High Plains' FTSA contains a provision providing that the primary receipt point will be changed to an upstream point if CIG purchases shipper's upstream facilities. CIG states that it has now acquired the High Plains' Niobrara compressor station and that this receipt point change provision is no longer applicable. Therefore, the Commission directs CIG to remove this provision from the High Plains' FTSA.

### **C. Delivery Point Change**

19. The High Plains's FTSA contains a provision permitting High Plains to move its primary delivery point to a delivery point currently designated as a secondary point for six consecutive months of any year if backhaul capacity is available, with three months written notice. CIG states that this provision merely provides CIG's advance consent to such a move at the same contract rate.

20. Petroglyph's FTSA states that the shipper may designate another primary delivery point during the term of the agreement at the maximum rate. CIG states that this provision merely reiterates the shipper's right under the tariff to request changes in primary delivery points.<sup>5</sup>

### **Commission's Determination**

21. The Commission finds that the provisions contained in both High Plains and Petroglyph's FSAs pertaining to changes in primary delivery point rights are material deviations from CIG's pro forma service agreement that are unduly discriminatory in nature. Permitting shippers to change a primary delivery point without following the regular tariff procedures could adversely affect other shippers seeking primary point

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<sup>5</sup> CIG cites no tariff provision in its application.

capacity from the pipeline.<sup>6</sup> It follows that the shipper with the non-conforming provision would have priority for obtaining the primary point capacity. CIG states that this change in primary delivery point rights is merely a reiteration of the shipper's right under the tariff to request such a change.<sup>7</sup> The Commission finds no such provision included within the General Terms and Conditions of CIG's tariff. Therefore, the Commission directs CIG to place a clause permitting primary delivery point change provisions in its generally applicable tariff and reflect such a change in its pro forma service agreement. Alternatively, CIG may file to remove the delivery point change provision from the High Plains and Petroglyph FTSA's.

#### **D. Discount Rate**

22. All three FTSA's contain provisions that specify the rates applicable to the primary and secondary points under the agreements. In some cases these provisions explain the conditions under which a discount rate applies.

#### **Commission's Determination**

23. The Commission finds that offering discounted rates to both primary and secondary points under the three FTSA's is not unduly discriminatory to other shippers on CIG's system. The Commission has held that rates that fall between the maximum and minimum tariff rates would not be considered material.<sup>8</sup> As a result, there would be no deviation from the Commission's approved pro forma service agreements. Therefore, the Commission will accept the discount rate provision as proposed.

#### **IV. Flexible Production-Related Provisions**

24. Petroglyph's FTSA contains a provision that requires Petroglyph to assign the FTSA if it assigns the leases or wells underlying the production related to this agreement. CIG states that this provision is necessary to give effect to the contract buyout or buydown rights discussed above. Since the ability to buyout or buydown the FTSA is dependent upon Petroglyph's available production, CIG argues that the production lease rights must be associated with the FTSA.

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<sup>6</sup> See ANR Pipeline Company, 103 FERC ¶ 61,223 (2003).

<sup>7</sup> See Page 6 of CIG's transmittal sheet.

<sup>8</sup> See Columbia Gas Transmission Corporation, 97 FERC ¶ 61,221 (2001). See also Williston Basin Interstate Company, 84 FERC ¶ 61,348 at 62,519 (1998).

25. CIG states that Petroglyph's FTSA creates a discount rate adjustment mechanism for base service and authorized overrun service during calendar year 1999. However, CIG notes that since this provision did not extend beyond 1999, it is no longer effective.

### **Commission's Determination**

26. The Commission has determined that since the buyout and buydown right of the FTSA is dependent upon Petroglyph's available production, the lease rights must be associated with the FTSA. Therefore, the Commission will accept this material deviation from the standard production-related provision since it is not unduly discriminatory to other shippers but is unique to the Petroglyph agreement and is necessary due to the operational aspects of the FTSA.

27. The Petroglyph FTSA creates a discount rate adjustment mechanism for base service and authorized overrun service during calendar year 1999. Since this provision has expired, CIG is directed to remove this provision from the agreement.

## **V. FTSA Precedent Agreement**

28. CIG filed an agreement dated June 11, 1998, that serves as a precedent agreement for the Petroglyph FTSA. One provision in the precedent agreement entitles Petroglyph to certain additional transportation rights (i.e., MDQ adjustment) that are triggered by payment of an exit fee described above. If Petroglyph exercises this exit fee option, then it is entitled to have the exit fee credited against the cost of future transportation service at other receipt and delivery points on CIG's system, if capacity is available without constructing facilities and CIG is not economically disadvantaged by such transportation arrangement. CIG notes that to date Petroglyph has not exercised its exit fee option, electing instead to release capacity into the secondary market.

### **Commission's Determination**

29. The Commission finds that this crediting provision affects only the rate that Petroglyph must pay for service it receives, rather than the quality or amount of that service. As such, this crediting provision would not adversely affect the quality of service received by others or prevent others from obtaining service. In addition, the Commission has permitted the related MDQ adjustment provision as discussed above.<sup>9</sup> However, the Commission views this provision as a negotiated rate transaction since this crediting provision is a rate related change different from CIG's pro forma tariff. Therefore, CIG is directed to file revised tariff sheets listing this provision as a negotiated rate transaction pursuant to CIG's negotiated rate authority. Alternatively, CIG may file

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<sup>9</sup> See Paragraph 11 of this order.

this crediting provision in its generally applicable tariff and pro forma service agreement, in order to make available to all of CIG's shippers.

## **VI. Negotiated Rate Provisions**

30. CIG's agreement with Helmerich and Payne as well as the agreement with Petroglyph contain negotiated rate provisions. CIG received negotiated rate authority on April 25, 1996, but did not consider these two agreements to be negotiated rate contracts. Both contracts set forth rates below CIG's recourse rate. The Helmerich and Payne rate is adjusted annually by application of market indices. The rate charged has been approximately 11 cents/Dth and not more than 26.5 cents/Dth, during which time CIG's maximum recourse rates were approximately 26 cents to 32.5 cents per Dth. Petroglyph's rate of 32.5 cents per Dth is below the maximum rate during the term of its agreement. If the Commission decides that these are negotiated rate contracts, CIG will record the data in the appropriate accounts.

## **Commission's Determination**

31. The Helmerich and Payne FTSA is adjusted annually each October 1 by the percentage change in two market price indices. However, the adjusted rates can never be less than a specified floor for deliveries to certain delivery points, nor more than CIG's maximum tariff rates. The Commission will accept this FTSA provision since it was entered into prior to the Commission's modification of its negotiated rate policy, which no longer permits the use of gas basis differentials to price negotiated rate transactions.<sup>10</sup> However, since this FTSA involves gas basis differentials, the Commission views this FTSA as a negotiated rate transaction. Therefore, CIG is directed to file revised tariff sheets, within 30 days of the date this order issues, listing this FTSA as a negotiated rate transaction pursuant to CIG's negotiated rate authority.

32. The Petroglyph FTSA is based on a total fixed rate of 32.5 cents per Dth (computed on a 100% load factor basis) that is not subject to CIG's applicable maximum and minimum tariff rates. The Commission views this FTSA as a negotiated rate transaction since the rate is not subject to CIG's maximum tariff rate. Therefore, CIG is directed to file revised tariff sheets, within 30 days of the date this order issues, listing this FTSA as a negotiated rate transaction pursuant to CIG's negotiated rate authority.

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<sup>10</sup> See Natural Gas Pipeline Negotiated Rate Policies and Practices, 104 FERC ¶ 61,134 (2003).



The Commission orders:

(A) All three FTSAs filed herein are accepted, subject to CIG filing within 30 days of this order, to revise its tariff and form of service agreement consistent with the discussion above, so that various provisions do not constitute material deviations or negotiated terms and conditions of service.

(B) CIG is directed to file, within 30 days of this order, revised tariff sheets pursuant to its negotiated rate authority as discussed herein.

By the Commission.

( S E A L )

Linda Mitry,  
Acting Secretary.